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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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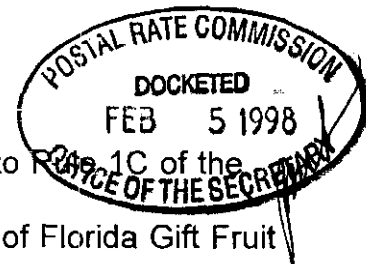
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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

MOTION OF UNITED STATES POSTAL SERVICE
TO STRIKE THE TESTIMONY OF
FLORIDA GIFT FRUIT SHIPPERS ASSOCIATION
WITNESS MEREWITZ, FGFS-A-T-1
(February 5, 1998)



The United States Postal Service hereby moves, pursuant to Rule 1C of the Commission's Special Rules of Practice, to strike the testimony of Florida Gift Fruit Shippers Association (FGFSA) witness Leonard Merewitz, designated FGFS-A-T-1, the exhibits accompanying that testimony, and Library References FGFS-A-H-1 and FGFS-A-H-2. In accordance with Rule 1C, this motion is being filed fourteen days prior to the date scheduled for Mr. Merewitz's hearing before the Postal Rate Commission. *Presiding Officer's Ruling No. R97-1/90, Appendix A.* The Postal Service recognizes that motions to strike testimony of witnesses are considered extraordinary relief. *Special Rule of Practice 1C.* As explained below, however, such relief is warranted in this instance given the condition of Dr. Merewitz's testimony, the unavailing efforts of the Postal Service to conduct meaningful discovery on it, and the lack of availability of other procedural alternatives. The analysis contained in Dr. Merewitz's exhibits forms the linchpin of the conclusions reached in his testimony. Predominantly because of the lack of information, either filed initially or in response to discovery requests, necessary to replicate this analysis, the Postal Service can test

neither his analysis nor his conclusions. Accordingly, the Postal Service is requesting that Dr. Merewitz's testimony, exhibits, and related library references be stricken in their entirety.

Dr. Merewitz's testimony, as filed on December 30, 1997, was essentially incomplete. It was replete with errors, to the point that certain portions of the testimony were virtually unreadable. The testimony cited to twelve exhibits (LAM-1 - LAM-12) which do not appear to comply in any manner with the workpaper requirements for intervenor testimony set out in Rule 92(l) of the Commission's Rules of Practice. The exhibits accompanying the testimony contained inconsistent, at best, source information, and, in one case, the testimony referred to an exhibit that does not exist. *See Testimony of Leonard Merewitz in Behalf of Florida Gift Fruit Shippers Association, FGFS-A-T-1* at 5, line 1; response of FGFS-A witness Merewitz to USPS/FGFS-A-T1-7, filed January 26, 1998. The testimony, as filed, contained no workpapers, although it is evident that many of the exhibits were derived through underlying calculations. None of the exhibits to the testimony were provided in machine-readable form.

These deficiencies provided the Postal Service with ample justification for a motion to strike the testimony at the time it was filed, however, the Postal Service has attempted to make sense of the testimony and work through its defects using the discovery process. Of the thirty-eight discovery requests that the Postal Service initially filed regarding Dr. Merewitz's testimony (on January 8, 9, and 15), nearly half of them simply sought definitions of terms as Dr. Merewitz used them in his

testimony, requested sources of numbers cited, or indicated errors in the testimony. See *United States Postal Service Interrogatories and Requests for Production of Documents to the Florida Gift Fruit Shippers Association Witness Merewitz (USPS/FGFSA-T1-4,5,7-9, 11, 13-14, 17-19, 21-23, 30, and 34)*. The Alliance of Nonprofit Mailers also has filed interrogatories seeking to decipher Dr. Merewitz's testimony. See *Interrogatories of Alliance of Nonprofit Mailers to Florida Gift Fruit Shippers Association Witness Merewitz (ANM?FGFSA-T1-1-11)*, January 27, 1998.

Moreover, because of the importance of a cited but evidently omitted exhibit (LAM-5) and the failure to provide exhibits in machine-readable form, counsel for the Postal Service not only sought these materials in discovery, but additionally contacted counsel for FGFSA, to bring to his attention these particular omissions. FGFSA's counsel indicated that he would do what he could to provide this information, but the Postal Service did not receive it until after the discovery responses were filed on January 26.¹

Dr. Merewitz contacted counsel for the Postal Service on January 26 to indicate that the responses to discovery requests USPS/FGFSA-T1-1-38 were being filed, along with errata to the testimony. At that time, counsel for the Postal Service asked if the materials could be sent via facsimile. Dr. Merewitz agreed to send the filings in this manner, but only the discovery responses were sent. It was not until the

¹ We note that the responses to USPS/FGFSA-1-16 were filed four days late, and that the responses to USPS/FGFSA-17-38-33 were filed three days late. The Postal Service has been unable to locate a motion for late acceptance or motion for extension of time.

afternoon of January 27, one day prior to the close of discovery on the testimony of intervenors, that the Postal Service received a copy of Dr. Merewitz's revised testimony and a diskette containing, presumably, machine-readable copies of his workpapers.

The revisions to FGFS-A-T-1 were extensive; because of the number of changes made, the entire testimony was completely reproduced with the revisions. See *Florida Gift Fruit Shippers Association Notice of Errata to Direct Testimony of Leonard Merewitz*, January 26, 1998. Moreover, upon reviewing the workpaper diskette provided on January 27, Postal Service personnel discovered that neither Excel nor Lotus 1-2-3 could read it. On January 28, 1998, counsel for the Postal Service contacted counsel for FGFS-A, and left a message that the diskette appeared not to be readable. Before receiving a response, Postal Service personnel realized that the diskette provided by Dr. Merewitz only contained his testimony in electronic form, not the underlying workpapers for his exhibits.

Determining that it would be fastest if the Postal Service itself obtained copies of the workpapers underlying Dr. Merewitz's exhibits², a Postal Service analyst went to the Postal Rate Commission on Friday, January 30, 1998, and made copies of both the hard-copy materials and diskette.³ Upon bringing the materials back to the

² These materials were filed by FGFS-A as Library References FGFS-A-H-1 and FGFS-A-H-2.

³ The Postal Service does not mean to imply that either Dr. Merewitz or his counsel have refused to furnish whatever materials the Postal Service has requested. In fact, at the end of last week, Dr. Merewitz called counsel, apparently to offer to send copies of the Library References, but was informed that we had obtained copies from the

Postal Service and attempting to review them, it was discovered that the diskette material was prepared in a very recent version of Quattro Pro, which Postal Service personnel did not have on their computers. The diskette material was then emailed to an outside consultant who opened the files and transmitted them back to the Postal Service over the weekend. Ongoing review of the spreadsheets since that time has revealed that they are woefully incomplete.

For example, Dr. Merewitz's Exhibits LAM-3 and LAM-4a contain distribution keys which purport to replicate the TRACS methodology with certain changes, notably the absence of expansion to truck size. Unfortunately, the spreadsheets provided in electronic format do not bring the Postal Service, or any other interested party, any closer to understanding how the numbers in question were derived. They merely contain an electronic replica of the very same results whose sources still remain in question. Without accompanying SAS logs to show the exact nature of the implementation of the changes, and without input data to substantiate the development of these numbers, the distribution keys are meaningless and irrelevant, as they can not be verified for theoretical and mathematical correctness.

For instance, spreadsheet "DKRERU~1.WB3" provides the final output of a SAS program which apparently calculates Intra-BMC and Inter-BMC cubic feet and percentages for various subclasses of unloaded mail, weighted by some additional,

Commission and that we thought we had what we needed. The Postal Service does not doubt that Dr. Merewitz will furnish the missing materials. The point, however, is that it is simply too late in the game to be requesting the underlying calculations and sources for the numbers contained in Dr. Merewitz's testimony. These should have been filed on December 30, 1998, along with his testimony.

ambiguous factor(s). Additionally, spreadsheets "DKRERU~2.WB3" and "EXHIBITS.WB3 (D)" similarly provide the final output of a SAS program which apparently calculates Intra-BMC and Inter-BMC cubic feet, cubic foot miles, cost, and percentages (for all three aforementioned variables) for various subclasses of unloaded mail, again weighted by some additional, ambiguous factor(s). Finally, spreadsheets "EXHIBITS.WB3", "LAM13.WB3", and "LAM~3REV.WB3" provide the final output of a SAS program which apparently calculates Intra-BMC and Inter-BMC cubic feet, cubic foot miles, cost, and percentages (for all three aforementioned variables) for seven categories of mail (First Class, Periodicals, Priority/Express, International, Standard A, Standard B Parcels, and Standard B Other), weighted by some additional, ambiguous factor(s). All of the aforementioned spreadsheets contain only hard-coded numbers⁴ and provide no insight as to how their respective results were produced using TRACS sample data. Only the final distribution keys are shown, and it remains a mystery how the cubic feet, cubic foot miles, and costs were "built-up" or weighted from the TRACS sample data. If these distribution keys are purported to be the results of some modification(s) to the TRACS highway expansion programs, such modifications must be presented and explained in detail, and all necessary SAS programs, input files, and program execution logs must be provided, for all four quarters of the Base Year, so that the Postal Service may appropriately review and replicate the calculations.

⁴ In other words, the spreadsheets contain only numerical values, not underlying formulae, derivatives and analyses, or links to source data.

Similar problems exist with regard to other of Dr. Merewitz's library reference materials. For example, the file "DROPSH-1.WB3", which appears to be the source material for LAM-6, refers to the file "DROPSHIP.INCR.PURCH2.WB3", which is missing. Also, the file "DROPSH-1.WB3" contains numbers sourced to 1991 and 1996 billing determinants. It is not obvious how or even if the numbers crosswalk to the Postal Service's billing determinants for those years, and no calculations are provided demonstrating how Dr. Merewitz's numbers were derived. As another example, the file "QURTPU-1.WB.3", which apparently was used to create LAM-2a, contains a footnote which refers to nothing in either the file or the exhibit. Finally, the electronic spreadsheets contain files ("LAM13.WB3" and "LAM3REV.WB3"), which evidently are not even used in Dr. Merewitz's testimony or, if they are used, it is entirely unclear how. Review of Dr. Merewitz's spreadsheets continues and, based on experience to date, the Postal Service fears it will find further missing files and missing calculations.

So as not to waive its right to obtain answers and to any procedural protections to which it is entitled, the Postal Service has filed follow-up interrogatories, attempting to resolve these issues.⁵ However, responses to the interrogatories are not due until Tuesday, February 17. There simply is not enough time for the Postal Service to obtain these materials, thoroughly review them and still have adequate time to prepare for oral cross-examination of Dr. Merewitz on February 19, 1998.

⁵ See *United States Postal Service Interrogatories and Requests for Production of Documents to the Florida Gift Fruit Shippers Association Witness Merewitz (USPS/FGFSA-T1-39-55), February 2, 1998 and (USPS/FGFSA-T1-56-65), February 3, 1998.*

Even if Dr. Merewitz were to file his responses early or if Dr. Merewitz were to be rescheduled for a later hearing date, the prejudice suffered by the Postal Service will not have been cured. More than one month after the filing of intervenor testimony, the Postal Service is still at a loss to determine exactly how Dr. Merewitz derived the exhibits which form the bedrock for the conclusions posited in his testimony. Moreover, the Postal Service does not doubt that it will have further follow-up questions about the outstanding material which likely will not be amenable to either quick or easy resolution, and therefore not appropriate for oral cross-examination. *See Special Rule 4B.* In addition, the Postal Service must be able to devote sufficient time and resources to preparation of rebuttal testimony, which is due on March 9, 1998. The incomplete and confused state of Dr. Merewitz's testimony, exhibits and library references has interfered with the Postal Service's ability to even determine whether rebuttal to Dr. Merewitz's testimony is needed, much less to prepare it.

Further, there is not sufficient time in the remaining procedural schedule to delay Dr. Merewitz's appearance without risking the Commission's ability to issue a recommended decision within the 10-month statutory deadline. The upcoming round of hearings is scheduled to end on February 27. Rebuttal testimony is due only a little over a week later. A week after that, hearings on rebuttal will commence, followed shortly by briefs and reply briefs. The Commission will have only one short month for preparation and issuance of its recommended decision. There clearly is no room in the schedule for a side track of hearings and rebuttal on transportation

issues. Thus, striking Dr. Merewitz's testimony, exhibits and library references in their totality is the only viable alternative.

For all of the foregoing reasons, the Postal Service respectfully requests that its motion to strike be granted.

Respectfully submitted,

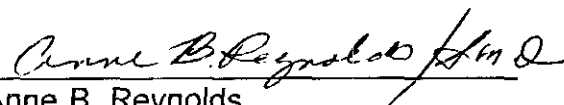
UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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